

FILED  
AUG 21 PM 3:02  
RICHARD W. WHELAN  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiffs,  
WARNER BROS. RECORDS INC.;  
SONY BMG MUSIC ENTERTAINMENT;  
UMG RECORDINGS, INC.; and  
ELEKTRA ENTERTAINMENT GROUP INC.

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
DIVISION

HRL

WARNER BROS. RECORDS INC., a Delaware  
corporation; SONY BMG MUSIC  
ENTERTAINMENT, a Delaware general  
partnership; UMG RECORDINGS, INC., a  
Delaware corporation; and ELEKTRA  
ENTERTAINMENT GROUP INC., a Delaware  
corporation,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO.

CV 08

3997

COMPLAINT FOR COPYRIGHT  
INFRINGEMENT

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. \_\_\_\_\_

#39515 v1

ORIGINAL

**JURISDICTION AND VENUE**

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant may be found in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District. On information and belief, personal jurisdiction in this District is proper because Defendant, without consent or permission of the copyright owner, disseminated over the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief, such illegal dissemination occurred in every jurisdiction in the United States, including this one. In addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

**PARTIES**

4. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

5. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

7. Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

8. The true name and capacity of Defendant are unknown to Plaintiffs at this time. Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs

1 believe that information obtained in discovery will lead to the identification of Defendant's true  
2 name.

3 **COUNT I**

4 **INFRINGEMENT OF COPYRIGHTS**

5 9. Plaintiffs incorporate herein by this reference each and every allegation contained in  
6 each paragraph above.

7 10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of  
8 exclusive rights under United States copyright law with respect to certain copyrighted sound  
9 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this  
10 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted  
11 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright  
12 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of  
13 Exhibit A.

14 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the  
15 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted  
16 Recordings to the public.

17 12. Plaintiffs are informed and believe that Defendant, without the permission or consent  
18 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to  
19 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies  
20 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant  
21 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.  
22 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the  
23 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and  
24 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive  
25 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are  
26 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously  
27 downloaded and/or distributed to the public additional sound recordings owned by or exclusively  
28 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of

1 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being  
2 distributed by Defendant.)

3 13. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on  
4 each respective album cover of each of the sound recordings identified in Exhibit A. These notices  
5 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.  
6 These published copies were widely available, and each of the published copies of the sound  
7 recordings identified in Exhibit A was accessible by Defendant.

8 14. Plaintiffs are informed and believe that the foregoing acts of infringement have been  
9 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

10 15. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights  
11 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against  
12 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to  
13 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

14 16. The conduct of Defendant is causing and, unless enjoined and restrained by this  
15 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated  
16 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502  
17 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing  
18 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound  
19 recordings made in violation of Plaintiffs' exclusive rights.

20 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

21 1. For an injunction providing:

22 "Defendant shall be and hereby is enjoined from directly or indirectly  
23 infringing Plaintiffs' rights under federal or state law in the  
24 Copyrighted Recordings and any sound recording, whether now in  
25 existence or later created, that is owned or controlled by Plaintiffs (or  
26 any parent, subsidiary, or affiliate record label of Plaintiffs)  
27 ("Plaintiffs' Recordings"), including without limitation by using the  
28 Internet or any online media distribution system to reproduce (*i.e.*,  
download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload)  
any of Plaintiffs' Recordings, except pursuant to a lawful license or  
with the express authority of Plaintiffs. Defendant also shall destroy  
all copies of Plaintiffs' Recordings that Defendant has downloaded  
onto any computer hard drive or server without Plaintiffs'  
authorization and shall destroy all copies of those downloaded

recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: August 21, 2008

HOLME ROBERTS & OWEN LLP

By

  
DAWNIELL ZAVALA

Attorney for Plaintiffs

WARNER BROS. RECORDS INC.; SONY  
BMG MUSIC ENTERTAINMENT; UMG  
RECORDINGS, INC.; and ELEKTRA  
ENTERTAINMENT GROUP INC.



**EXHIBIT A****JOHN DOE****IP Address:** 128.12.118.231 2008-01-24 00:02:32 EST**CASE ID#** 156626382**P2P Network:** GnutellaUS**Total Audio Files:** 1331

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	Fleetwood Mac	Go Your Own Way	Rumours	N39857
SONY BMG MUSIC ENTERTAINMENT	Kansas	Dust In The Wind	Point Of Know Return	N46813
UMG Recordings, Inc.	Jodeci	Come and Talk to Me	Forever My Lady	129-912
UMG Recordings, Inc.	Whitesnake	Is This Love	Whitesnake	82-749
UMG Recordings, Inc.	DMX	Party Up	...And Then There Was X	279-017
Elektra Entertainment Group Inc.	Eagles	Take It to the Limit	One of These Nights	N28687
SONY BMG MUSIC ENTERTAINMENT	Lyfe Jennings	Hypothetically	Lyfe 268-192	363-168
SONY BMG MUSIC ENTERTAINMENT	Sade	By Your Side	Lovers Rock	298-354

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. \_\_\_\_\_

#39515 v1



## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

## I. (a) PLAINTIFFS

WARNER BROS. RECORDS INC.; SONY BMG MUSIC  
ENTERTAINMENT; UMG RECORDINGS, INC.; and ELEKTRA  
ENTERTAINMENT GROUP INC.

## (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

Los Angeles County, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANT

JOHN DOE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

HOLME ROBERTS & OWEN LLP

Dawniell Zavala (SBN: 253130)

560 Mission Street, 25th Floor

San Francisco, CA 94105-2994

Phone: (415) 268-2000

Fax: (415) 268-1999

## ATTORNEYS (IF KNOWN)

E-filing

HRL

ADR

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

- | CONTRACT  | TORTS   | FORFEITURE/PENALTY  | BANKRUPTCY   | OTHER STATUTES   |
|---|---|---|--|--|
| <input type="checkbox"/> 110 Insurance  | <input type="checkbox"/> 310 Airplane                                   | <input type="checkbox"/> 610 Agriculture                            | <input type="checkbox"/> 422 Appeal                              | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 315 Airplane Product Liability                 | <input type="checkbox"/> 620 Other Food & Drug                      | <input type="checkbox"/> 28 USC 158                              | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 320 Assault, Libel & Slander                   | <input type="checkbox"/> 625 Drug Related Seizure of Property       | <input type="checkbox"/> 423 Withdrawal                          | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 330 Federal Employers' Liability               | <input type="checkbox"/> 21 USC 881                                 | <input type="checkbox"/> 28 USC 157                              | <input type="checkbox"/> 450 Commerce/ICC Rates/etc.                                   |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 340 Marine Liability                           | <input type="checkbox"/> 630 Liquor Laws                            | <b>PROPERTY RIGHTS</b>   | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 345 Marine Product Liability                   | <input type="checkbox"/> 640 RR & Truck                             | <input checked="" type="checkbox"/> 820 Copyrights               | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle Liability                    | <input type="checkbox"/> 650 Airline Regs                           | <input type="checkbox"/> 860 Patent                              | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 355 Motor Vehicle Product Liability            | <input type="checkbox"/> 660 Occupational Safety/Health             | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 850 Securities/Commodities/Exchange                           |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 360 Other Personal Injury                      | <input type="checkbox"/> 690 Other                                  | <b>SOCIAL SECURITY</b>   | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 190 Other Contract                                       | <b>PERSONAL INJURY</b>  | <b>LABOR</b>  | <input type="checkbox"/> 861 HIA (1395ff)                        | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 195 Contract Product Liability                           | <input type="checkbox"/> 362 Personal Injury Med. Malpractice           | <input type="checkbox"/> 710 Fair Labor Standards Act               | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| <input type="checkbox"/> 196 Franchise  | <input type="checkbox"/> 365 Personal Injury Product Liability          | <input type="checkbox"/> 720 Labor/Mgmt. Relations                  | <input type="checkbox"/> 863 DIWC/DIWW 405(g)                    | <input type="checkbox"/> 893 Environmental Matters                                     |
|   | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 864 SSID Title XVI                      | <input type="checkbox"/> 894 Energy Allocation Act                                     |
|   | <b>PERSONAL PROPERTY</b>  | <input type="checkbox"/> 740 Railway Labor Act                      | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 895 Freedom of Information Act                                |
|   | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 790 Other Labor Litigation                 | <b>FEDERAL TAX SUITS</b>   | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
|   | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act           | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 950 Constitutionality of State Statutes                       |
|   | <input type="checkbox"/> 380 Other Personal Property Damage             |   | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         | <input type="checkbox"/> 890 Other Statutory Actions                                   |
|   | <input type="checkbox"/> 385 Property Damage Product Liability          |   |  |  |
| <b>REAL PROPERTY</b>  | <b>CIVIL RIGHTS</b>   | <b>PRISONER PETITIONS</b>   |  |  |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 441 Voting                                     | <input type="checkbox"/> 510 Motions to Vacate Sentence             |  |  |
| <input type="checkbox"/> 220 Foreclosure  | <input type="checkbox"/> 442 Employment                                 | Habeas Corpus:  |  |  |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 443 Housing                                    | <input type="checkbox"/> 530 General                                |  |  |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 444 Welfare                                    | <input type="checkbox"/> 535 Death Penalty                          |  |  |
| <input type="checkbox"/> 245 Tort Product Liability                               | <input type="checkbox"/> 440 Other Civil Rights                         | <input type="checkbox"/> 540 Mandamus & Other                       |  |  |
| <input type="checkbox"/> 290 All Other Real Property                              | <input type="checkbox"/> 445 Amer w/disab - Empl                        | <input type="checkbox"/> 550 Civil Rights                           |  |  |
|   | <input type="checkbox"/> 446 Amer w/disab - Other                       | <input type="checkbox"/> 555 Prison Condition                       |  |  |
|   | <input type="checkbox"/> 480 Consumer Credit                            |   |  |  |
|   | <input type="checkbox"/> 490 Cable/Satellite TV                         |   |  |  |

## VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

17 U.S.C. § 501 et seq. - copyright infringement

## VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23:

DEMAND \$

☐ CHECK YES only if demanded in complaint

Statutory damages; injunction

JURY DEMAND:

☐ YES

☒ NO

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

## IX. DIVISIONAL ASSIGNMENT

(CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)

☒

SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE August 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*